

July 23, 2024

VIA ECF

Magistrate Judge Peggy Kuo
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn NY 11201

**Re: *State Farm Mut. Auto. Ins. Co., et al. v. Metro Pain Specialists P.C., et al.*,
Case No. 21 Civ. 5523 (E.D.N.Y.) – Revised Proposed Case Schedule**

Dear Judge Kuo:

Pursuant to Federal Rule 16(b), Local Civil Rule 16.2, and this Court’s Individual Practice Rule IV, plaintiffs State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company (collectively, “Plaintiffs”) and Defendants Leonid Shapiro, M.D., Metro Pain Specialists P.C., Tri-Borough NY Medical Practice P.C., Yan Moshe, Hackensack Specialty ASC LLC, Integrated Specialty ASC LLC, Citimed Surgery Center LLC, SCOB LLC, Star Solution Services Inc., NJMHC LLC (d/b/a Hudson Regional Hospital), Reuven Alon, Columbus Imaging Center LLC, Medaid Radiology LLC, Beshert Corp., Nizar Kifaieh, M.D., Premier Anesthesia Associates P.A., Regina Moshe, M.D., Citimedical I, PLLC, Citimed Services, P.A., Citimedical Services P.C., Citimed Complete Medical Care P.C., Citimed Management Services Inc., Vadim Dolsky, Optimum Health Acupuncture, P.C., Mark Gladstein, Victoria Frenkel, Advanced Comprehensive Laboratory LLC, Amro Mahmoud Barakat, Barakat PT, P.C., Paul Victor Scarborough, A.O.T. Chiropractic P.C., and Evolution Chiropractic P.C. (collectively, the “Defendants,” and together with Plaintiffs, the “Parties”) write regarding the current fact discovery deadline of August 2, 2024. The Parties respectfully request this Court extend the deadlines set forth in the Discovery Plan and Case Schedule (Dkt. 405) and enter the Proposed Revised Discovery Plan and Case Schedule attached hereto as Exhibit A (the “Proposed Case Schedule”). No defendant objects to the Proposed Case Schedule.¹

¹ Counsel for defendants Peter Kopach and First Alternative PLM Acupuncture P.C. advised that he will be moving to withdraw as counsel for these defendants due to their lack of cooperation in their defense, and therefore takes no position on this letter motion. The Court has discharged counsel for defendants Mohamed Sayed Ahmed Hassan, Nile Rehab Physical Therapy P.C., Raouf Akl, and Primavera Physical Therapy P.C., and Plaintiffs have been unable to contact these defendants as they have not appeared through new counsel or otherwise communicated with the Court regarding their intentions to defend the claims asserted against them. As Nile Rehab Physical Therapy and Primavera Physical Therapy cannot proceed without counsel, Plaintiffs will be moving for a default judgment against them.

The following 24 defendants have settled their claims with Plaintiffs and been dismissed from the case: Lyudmila Krupnova; LK Acupuncturist P.C.; Mohamed Elsayed Khallaf; Handy Physical Therapy P.C.; Mahmoud Ezz Eldeen Shalaby; Physical Therapy of New York P.C.; Edwin Castillo; Edcas Acupuncture P.C.; Peter Albis; PDA NY Chiropractic P.C.; Giulio Caruso; Brook Chiropractic of NY P.C.; Integrated

As relevant background, on August 14, 2023, the Court granted Plaintiffs' motion for leave to file the Second Amended Complaint (the "SAC"), which Plaintiffs filed on August 17. The SAC added 16 new defendants, expanded the scope of the scheme based on new information learned through discovery, and increased Plaintiffs' alleged damages to more than \$22 million. On September 1, 2023, the Court entered the operative case schedule (Dkt. 405), which requires the parties to complete fact discovery by August 2, 2024. In the intervening 11 months, certain defendants asserted counterclaims, a motion to dismiss was fully briefed and remains pending, party and nonparty discovery requests have been served, millions of pages of documents have been produced, some depositions have been taken, and significant new information has been learned relating to the claims and defenses at issue.

Good cause supports the Parties' request to extend the current fact discovery deadline. Among the reasons supporting the requested extension are the following:

- Significant relevant discovery is still expected, including ESI first sought in discovery requests issued in April 2022 and which has been the subject of extensive motion practice before this Court (*see, e.g.*, Dkts. 396, 397, 435, 513, 563). Despite extensive effort and expense, production and even collection of relevant ESI has not been completed and is continuing as of the date of this request.
- Significant witness Jelani Wray, whose deposition was initially noticed on December 8, 2022, has not yet been deposed. Wray is currently incarcerated and has filed a series of motions opposing his deposition in both the Eastern District of New York and the Middle District of Pennsylvania where he is incarcerated. The District Court in the Middle District of Pennsylvania is expected to consider on August 12, 2024 whether to transfer the matter to the Eastern District of New York for resolution. Thus, the question of whether Wray can even be deposed is unlikely to be resolved until at least several weeks after that date.
- Documents and depositions have been sought from defendants Mohamed Sayed Ahmed Hassan, P.T. and Raouf Akl, P.T. Counsel for Hassan was discharged on July 2 and for Akl on July 19, and the issue of their representation in the matter moving forward will not be resolved until at least August 1. If these defendants choose to proceed pro se, efforts to schedule their depositions cannot even begin until July 22 for Hassan and August 1 for Akl. *See* Dkts. 263, 284, 552, 564).

Chiropractic of NY P.C.; Alpeshkumar Manughai Patel; A. M. Patel Physical Therapy P.C.; Geoffrey Allerton Cushman; PI Physical Therapy P.C.; Longyu Ma; Hidden Dragon Acupuncture P.C.; Xia Guan, Rebound Acupuncture P.C.; Vladimir Nazarov; Sherwin Catugda Paller; and Floral Park Physical Therapy P.C.

The following 14 defendants have failed to appear in this action, and certificates of default have been entered against them: Irina Kataeva; Cityworks Physical Therapy, P.C.; Hyeongsock Choi; Choice Acupuncture PLLC; Choi-Go Acupuncture PLLC; Leonard Luna; Kings Chiropractic Wellness, P.C.; SJM Acupuncture P.C.; Right Aid Medical Supply Corp.; Jongdug Park; J Park Chiropractic P.C.; All About Chiropractic P.C.; Ahmed Mamoud Abdelshafy Elmansy; and Sky Limit Physical Therapy, P.C.

Plaintiffs have been unable to locate defendant Stacy Juyoung Moon and have not yet served her with the Second Amended Complaint.

- Important non-party discovery has been sought from The Russell Friedman Law Group LLP and The Russell Friedman Law Practice LLP pursuant to subpoenas respectively served on March 28 and April 1, 2024. To date, The Russell Friedman Law Group has failed to produce any documents and The Russell Friedman Law Practice has produced only some documents responsive to the subpoenas. Both are ignoring communications relating to noncompliance, which will require motion practice to resolve.
- Non-parties Roman Yunusov and Tatyana Rabinovich were each personally served with a document subpoena after which they produced records through counsel for the Citimedical Defendants.² When Plaintiffs attempted to serve subpoenas *ad testificandum* on Yunusov and Rabinovich through those same attorneys, Plaintiffs were advised the attorneys did not represent Yunusov or Rabinovich and could not accept service. Plaintiffs have been unable to serve Yunusov or Rabinovich and will need to seek leave to serve them by alternative means and will need time to do so.
- Defendant Dolsky and his entities have not produced any documents in response to document requests in this case and need time to do so.
- While the Parties can, have, and expect to take depositions before all document production and written discovery is complete, it is critical for the Parties to have certain materials before taking important depositions. A significant number of important depositions still need to be taken. Delays in obtaining key documents from parties and non-parties, including ESI, have delayed these key depositions.
- New counsel appeared for defendants Vadim Dolsky, Yan Moshe, Reuven Alon, Leonid Shapiro, M.D., Nizar Kifaieh, M.D., and their respective corporate entities for the first time between September 19, 2023 and January 30, 2024. Their later appearance in the case has resulted in their need for additional time to propound and respond to discovery.

The relief requested herein will not unduly prejudice any party because Plaintiffs and Defendants alike require additional time to complete discovery. Given their diligence in seeking and obtaining discovery throughout this action, the complexity of the issues, the number of parties, the discovery to be completed, and the absence of any objection from any party, the Parties respectfully request the Court enter the attached Proposed Case Schedule.

² “Citimedical Defendants” refers to the following defendants: Regina Moshe, M.D., Citimedical I, PLLC, Citimed Services P.A., Citimedical Services P.C., Citimed Complete Medical Care P.C., and Citimed Management Services Inc.

Respectfully Submitted,

By: /s/ Jonathan L. Marks

KATTEN MUCHIN ROSENMAN LLP

Ross O. Silverman
Jonathan L. Marks
525 West Monroe Street
Chicago, Illinois 60661-3693
Telephone: 312.902.5200
Facsimile: 312.902.1061
ross.silverman@katten.com
jonathan.marks@katten.com

Christopher T. Cook
50 Rockefeller Plaza
New York, New York 10020
Telephone: 212.940.8800
christopher.cook@katten.com

*Attorneys for Plaintiffs State Farm
Mutual Automobile Insurance Company
and State Farm Fire and Casualty
Company*

By: /s/ Steven J. Harfenist

HARFENIST KRAUT & PERLSTEIN LLP

Steven J. Harfenist
3000 Marcus Avenue
Suite 2e1
Lake Success, NY 11042
516-355-9600
sharfenist@hkplaw.com

*Attorneys for Defendants Metro Pain
Specialists P.C., Leonid Shapiro, and Tri-
Borough NY Medical Practice P.C.*

By: /s/ Anthony M. Juliano

BRACH EICHLER LLC

Anthony M. Juliano
Shannon Carroll
Keith J. Roberts
101 Eisenhower Parkway
Ste 201
Roseland, NJ 07068
973-403-3126
ajuliano@bracheichler.com
scarroll@bracheichler.com
kroberts@bracheichler.com

*Attorneys for Defendants Reuven Alon,
Columbus Imaging Center LLC, Medaid
Radiology LLC, Beshert Corp. Yan Moshe,
Hackensack Specialty ASC LLC, Integrated
Specialty ASC LLC, Citimed Surgery Center
LLC, SCOB LLC, Star Solution Services Inc.,
Nizar Kifaieh, M.D., Premier Anesthesia
Associates, P.A., and NJMHC LLC*

By: /s/ Joseph A. D'Agostino

FASS & D'AGOSTINO P.C.

Joseph A. D'Agostino
50 Broadhollow Road
Suite 217
Melville, NY 11747
631-824-6040
Fax: 631-824-6040
jdagostino@fdnylawfirm.com

*Attorneys for Defendants Paul Victor
Scarborough, D.C, A.O.T. Chiropractic P.C.,
and Evolution Chiropractic P.C.*

By: /s/ Byron A. Divins

CAPETOLA & DIVINS P.C.

Byron A. Divins
2 Hillside Avenue
STE. Building C
Williston Park, NY 11596
516-746-2300
bdivins@capetoladivinslaw.com

*Attorneys for Defendants Vadim Dolsky and
Optimum Health Acupuncture P.C.*

By: /s/ Thomas A. Leghorn

LONDON FISCHER LLP

Thomas A. Leghorn
59 Maiden Lane
New York, NY 10038
212-331-9555
Fax: 212-972-1030
tleghorn@londonfischer.com

*Attorney for Defendants Regina Moshe,
Citimedical I PLLC, Citimed Services P.A.,
Citimedical Services P.C., Citimed Complete
Medical Care P.C., and Citimed
Management Services Inc.*

By: /s/ Robert E. B. Hewitt

SCHWARTZ, CONROY & HACK PC

Robert E. B. Hewitt, III
666 Old Country Road, 9th Floor
Garden City, NY 11530
516-745-1122
reh@schlawpc.com

*Attorney for Defendants Amro Mahmoud
Barakat and Barakat PT P.C.*

By: /s/ Benjamin M. Pinczewski

LAW OFFICES OF BENJAMIN M.
PINCZEWSKI P.C.

Benjamin M. Pinczewski
2753 Coney Island Ave, Fl 2
Brooklyn, NY 11235
718-891-8200
bmp@psattorney.com

*Attorney for Defendants Mark Gladstein,
Victoria Frenkel, and Advanced
Comprehensive Laboratory LLC*

By: /s/ Peter M. Birzon

PETER BIRZON & ASSOCIATES, P.C.

Peter M. Birzon
400 Jericho Turnpike, Suit 100
Jericho, NY 11753
718-215-5300
pbrizon@pbalaw.net

*Attorney for Defendants Peter Kopach, L.Ac.
and First Alternative PLM Acupuncture P.C.*